

REMARKS

Upon entry of this amendment, claims 1-20 are pending. By this amendment, claims 1, 2, 4, 6, and 14 are amended. Applicants submit that the above amendments do not add new matter to the application and are fully supported by the specification. Applicants respectfully request reconsideration and timely withdrawal of the pending rejections for the reasons discussed below.

35 U.S.C. § 102 Rejection

Claims 18-20 stand rejected under 35 U.S.C. § 102(e) as being anticipated by the non-patent document entitled Forecast Pro Product Description ("Forecast"). Applicants respectfully traverse the rejection.

Applicants respectfully assert that Forecast is not prior art under 35 U.S.C. § 102(e). In this regard, Applicants submit that 35 U.S.C. § 102(e) requires (emphasis added):

35 U.S.C. 102 Conditions for patentability; novelty and loss of right to patent.

e) the invention was described in - (1) an **application for patent**, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a **patent granted on an application** for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language;

Applicants submit that the Forecast is neither an application for patent nor a patent granted on an application. Accordingly, Applicants respectfully assert that the rejection of claims 18-20 under 35 U.S.C. § 102(e) based on the non-patent document Forecast should be withdrawn and the claims passed to issue.

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Additionally, Forecast is not prior art under 35 U.S.C. § 102(a) or 35 U.S.C. § 102(b) because the downloaded document lacks a publication date or a retrieval date. In this regard, MPEP section 2128 sets forth in pertinent part (emphasis added):

Date of Availability

Prior art disclosures on the Internet or on an on-line database are considered to be publicly available as of the date the item was publicly posted. **If the publication does not include a publication date (or retrieval date), it cannot be relied upon as prior art under 35 U.S.C. 102(a) or (b)**, although it may be relied upon to provide evidence regarding the state of the art. Examiners may ask the Scientific and Technical Information Center to find the earliest date of publication. See MPEP § 901.06(a), paragraph IV. G.

Applicants assert that Forecast neither has a publication date nor a retrieval date. Additionally, it is well established that a copyright notice does not constitute a public publication date and thus Applicants assert that there is no evidence of the public publication thereof. Accordingly, Forecast is not proper prior art under 35 U.S.C. §§ 102(a), 102(b), and 102(e).

35 U.S.C. § 103 Rejection

Claims 1, 2, 4, 6, 8, 9, and 12-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U. S. Patent No. 6,313,921 issued to Kadowaki (“Kadowaki”) in view of Forecast. Applicants respectfully traverse.

The Examiner admits on page 4 of the Official Action that Kadowaki does not teach actively selecting, by analysis of the at least one profile element, a personalization engine from a plurality of personalization engines by the arbiter, the arbiter refining and altering a selection based on a number and type of the profile element. To address the deficiency, the Examiner applies Forecast.

Applicants respectfully assert that Forecast is not prior art under 35 U.S.C. § 103(a) because it is not available as prior art under any section of 35 U.S.C. § 102. More specifically,

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Forecast is not proper prior art under 35 U.S.C. §§ 102(a), 102(b), and 102(e), for the reasons noted-above.

Accordingly, because the Kadowaki does not disclose all of the features of the claims, for at least the reasons admitted by the Examiner, Applicants respectfully assert that the rejection of claims 1, 2, 4, 6, 8, 9, and 12-17 under 35 U.S.C. § 103(a) based on the non-patent document Kadowaki in view of Forecast should be withdrawn and the claims passed to issue.

Claims 3, 5, 10, and 11

Claims 3, 5, 10, and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kadowaki, in view of Forecast, in further view of U.S. Patent No. 6,044,376 to Kurtzman II ("Kurtzman"). This rejection is traversed.

Applicants note that claims 3, 5, 10, and 11 depend from allowable claim 1, and as such, include all the elements thereof. More specifically, at least because Forecast is not prior art, claim 1 is allowable and accordingly claims 3, 5, 10, and 11 are also allowable.

Claim 7

Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kadowaki, in view of Forecast, in further view of U.S. Patent No. 6,064,980 to Jacobi, et. al. ("Jacobi") and U.S. Patent No. 6,556,963 to Tetzlaff ("Tetzlaff"). This rejection is traversed.

Applicants note that claim 7 depends from allowable claim 1, and as such, includes all the elements thereof. More specifically, at least because Forecast is not prior art, claim 1 is allowable and accordingly claim 7 is also allowable.

Minor Amendments

Additionally, minor amendments have been made to claims 1, 2, 4, 6, and 13 in order to improve the language thereof. In these amendments, Applicants have made several changes to the language of the claims to render the same more self consistent, as well as more fully in compliance with U.S. syntax, idiom and grammar. These amendments do not change the scope of the claims but are merely cosmetic changes that give rise to no file wrapper estoppel.

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CONCLUSION

In view of the foregoing amendments and remarks, Applicants submit that all of the claims are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue. The Examiner is invited to contact the undersigned at the telephone number listed below, if needed. Applicants hereby make a written conditional petition for extension of time, if required. Please charge any deficiencies in fees and credit any overpayment of fees to IBM Deposit Account No. 09-0457 (Endicott).

Respectfully submitted,



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